

ASSEMBLY BILL

No. 926

Introduced by Assembly Member Richman

February 20, 2003

An act to repeal Sections 115010.5 and 115261 of, and to repeal Article 19 (commencing with Section 115273) of Chapter 8 of Part 9 of Division 104 of, the Health and Safety Code, and to repeal Sections 1 and 2 of Chapter 513 of the Statutes of 2002, relating to radioactive waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 926, as introduced, Richman. Low-Level radioactive waste disposal facility.

(1) Under existing law, the Southwestern Low-Level Radioactive Waste Disposal Compact specifies that California is to serve as the state required to host the regional low-level radioactive waste disposal facility for the permanent isolation of low-level radioactive waste pursuant to specified federal requirements and the requirements of the host state.

This bill would authorize the State Director of Health Services, with the approval of the Director of General Services, to lease specified property to construct, operate, and close a low-level radioactive waste disposal facility, consistent with the compact, in a specified location in the County of San Bernardino.

(2) The existing Radiation Control Law requires the State Department of Health Services, among other things, to issue licenses for the disposal of low-level radioactive waste, but prohibits the department from issuing a license for the disposal of low-level radioactive waste, or renewing a license, unless the department

determines that the siting, design, operation, and closure of the facility complies with specified federal regulations. Existing law also prohibits the department from issuing or renewing such a license unless the siting, design, and construction of the facility meet specified requirements and allows the department to issue a license to dispose of low-level radioactive waste only if the department makes a specified determination regarding a hydrologic pathway. Existing law also requires a facility for the disposal of low-level radioactive waste to meet specified design objectives and prohibits a facility from disposing of low-level radioactive waste using shallow land burial. Existing law prohibits the proposed Ward Valley radioactive waste disposal site from serving as the state's facility for purposes of the compact and prohibits the state from accepting ownership or other property rights to the site of that facility.

This bill would repeal those prohibitions and restrictions regarding the disposal of low-level radioactive waste and the licensing of a disposal facility.

(3) Existing law requires the department to establish and collect a fee for the issuance or renewal of a license to dispose of low-level radioactive waste and requires that any fee collected be sufficient to cover the costs incurred by the state in reviewing an application, issuing or renewing the license, and inspecting and conducting oversight of the licensee.

This bill would repeal the requirements regarding the establishment and collection of that fee.

(4) Existing law requires the department, when implementing the Radiation Control Law, to promote the reduction of low-level radioactive waste generated, by encouraging specified waste reduction practices.

This bill would repeal that requirement regarding waste reduction practices. The bill would also repeal statement of legislative intent regarding Ward Valley and standards for disposing of low-level radioactive waste.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:



(a) A federal judge has fined the State of Nebraska one hundred fifty-one million dollars (\$151,000,000) for thwarting a plan to open a low-level radioactive waste disposal facility in accordance with federal law and state contract with the Central Interstate Low Level Radioactive Waste (LLRW) Compact, which the States of Nebraska, Arkansas, Kansas, Louisiana, and Oklahoma entered into in 1986 (*Entergy Ark. Inc. v. Nebraska* (2002) 186 F.Supp.2d 1036). The court found that bad faith is an issue and that Nebraska's decision to reject the license application was politically motivated.

(b) In a separate action, filed in June 2002, the States of Alabama, Florida, Virginia, and Tennessee and the Southeast Compact Commission brought an action against the State of North Carolina for breach of contract. This case is reportedly headed directly to the United States Supreme Court, as the court has asked the Solicitor General for his opinion on whether the court should exercise original jurisdiction. This action could establish a template for legal action by party states against reluctant host states who do not or will not fulfill their contractual and statutory obligations.

(c) The only current disposal options available to disposers of low-level radioactive waste (Class A, B, or C) from California are facilities in South Carolina and Utah. Under South Carolina law, waste from outside the Atlantic Compact (New Jersey, Connecticut, and South Carolina) will not be accepted for disposal as of July 1, 2008. Therefore, if California maintains its present course, the southwestern compact states, including California, will have no place to dispose of their Class B and Class C waste after July 1, 2008.

(d) Under the Southwestern Low-Level Radioactive Waste Disposal Compact (compact), which has the force and effect of federal law, California is required to site and license a regional low-level radioactive waste (LLRW) disposal facility. California's ratification of the compact is codified in Article 17 (commencing with Section 115250) of Chapter 8 of Part 9 of Division 104 of the Health and Safety Code. The compact, among other things, does all the following:

(1) Establishes the compact, which consists of the States of California, Arizona, and North and South Dakota and designates the State of California as the host state for a compact LLRW waste

1 disposal facility for the first 30 years of the effective life of the
2 compact.

3 (2) Ensures by law, consistent with any applicable federal laws,
4 the protection and preservation of the public health and safety in
5 the siting, design, development, licensing, regulation, operation,
6 closure, decommissioning, and long-term care of the regional
7 facility.

8 (e) California is more than 10 years behind schedule to build
9 and operate the required LLRW disposal facility in accordance
10 with contractual obligations and state statutes.

11 (f) Assembly Bill 2214 of the 2001–02 Regular Session of the
12 Legislature, which was enacted as Chapter 513 of the Statutes of
13 2002, prohibits the utilization of the Ward Valley site for
14 construction and use as the state’s LLRW disposal facility. That act
15 ignores state and federal law, state contract obligations, over one
16 hundred million dollars (\$100,000,000) of invested capital and
17 untold millions of dollars in state regulatory costs and salaries, and
18 creates impossible conditions for the timely siting of needed
19 facilities elsewhere in the state.

20 (g) The findings and declarations in Section 1 of Chapter 513
21 of the Statutes of 2002 are contrary to the administrative record of
22 the license application and environmental reviews for the Ward
23 Valley site.

24 (h) US Ecology, the state’s license designee, has brought an
25 action against the state for breach of contract and the state’s failure
26 to act in good faith.

27 (i) Chapter 513 of the Statutes of 2002, and the legal actions
28 specified in this section, add significant credence to the US
29 Ecology’s case and collectively place the state at significant
30 financial risk.

31 SEC. 2. Section 115010.5 of the Health and Safety Code is
32 repealed.

33 ~~115010.5.—The department shall, by regulation, establish and~~
34 ~~collect a fee for the issuance or renewal of a license to dispose of~~
35 ~~low-level radioactive waste pursuant to this chapter. The fees~~
36 ~~collected shall be sufficient to cover the state’s cost in reviewing~~
37 ~~the application, issuing or renewing the license, and inspecting and~~
38 ~~conducting oversight of the licensee.~~

39 SEC. 3. Section 115261 of the Health and Safety Code is
40 repealed.

~~115261. (a) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the department determines that the siting, design, operation, and closure of the facility will, at a minimum, comply with the performance requirements and objectives of the Nuclear Regulatory Commission specified in Part 61 of Title 10 of the Code of Federal Regulations.~~

~~(b) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the disposal facility is sited, designed, constructed, and operated to do all of the following:~~

~~(1) Consist of multiple, engineered barriers to provide for the retention of the radioactive waste within the engineered barriers to last not less than 500 years, using best available technology.~~

~~(2) Provide visual inspection or remote monitoring to detect potential or actual releases of low-level radioactive waste from the engineered barriers.~~

~~(3) Provide methods to prevent potential releases or remediate actual releases of low-level radioactive waste from the engineered barriers when monitoring detects potential or actual releases.~~

~~(4) Be sited in a location and with soils and hydrology that, if the engineered barriers fail, the natural site characteristics would minimize migration of radioactive materials.~~

~~(c) A facility for the disposal of low-level radioactive waste may not use shallow land burial.~~

~~(d) (1) The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment.~~

~~(2) The proposed Ward Valley low-level radioactive disposal site in San Bernardino County may not serve as the state's low-level radioactive disposal facility for purposes of Article 5 of the compact.~~

~~(3) The state may not accept ownership or any other property rights to the site of the Ward Valley low-level radioactive waste disposal facility.~~

~~(e) For the purposes of this section, the following terms have the following meanings:~~

~~(1) “Commission” means the United States Nuclear Regulatory Commission.~~

~~(2) “Compact” means the Southwestern Low-Level Radioactive Waste Disposal Compact described in Section 115255.~~

~~(3) “Department” means the Department of Health Services.~~

~~(4) “Low-level radioactive waste” has the same meaning as defined in Article 2 of the compact.~~

~~(5) “Low-level radioactive waste disposal facility,” or “facility” means all contiguous land and structures, other appurtenances, and improvements, on the land used for the disposal of low-level radioactive waste.~~

~~(6) “Shallow land burial” means the disposal of low-level radioactive waste in or within the upper 30 meters of the earth’s surface without the use of additional confinement by engineered barriers. Shallow land burial does not include the disposal of low-level radioactive waste if the disposal facility meets the requirements of subdivisions (b) and (c).~~

~~(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.~~

~~SEC. 4. Article 19 (commencing with Section 115273) of Chapter 8 of Part 9 of Division 104 of the Health and Safety Code is repealed.~~

~~SEC. 5. Section 1 of Chapter 513 of the Statutes of 2002 is repealed.~~

~~Section 1. The Legislature finds and declares all of the following:~~

~~(a) Low-level radioactive waste generally is defined under federal and state laws as all radioactive waste other than spent reactor fuel, high level wastes from reprocessing spent fuel, certain high concentration wastes from nuclear weapons production, and uranium mill tailings. Low-level radioactive~~

1 ~~waste may include very long-lived materials, including~~
2 ~~plutonium-239, cesium-137, and strontium-90.~~

3 ~~(b) In 1985, the federal Low-Level Waste Policy Amendments~~
4 ~~Act offered incentives to states to provide for the disposal of~~
5 ~~low-level radioactive waste, preferably through the establishment~~
6 ~~of regional compacts. California entered into the Southwestern~~
7 ~~Low-Level Radioactive Waste Disposal Compact (Section 115255~~
8 ~~of the Health and Safety Code) in 1987 with the States of Arizona,~~
9 ~~North Dakota, and South Dakota. Under this compact, the state~~
10 ~~agreed to host a disposal facility for low-level radioactive wastes~~
11 ~~for the first 30 years~~

12 ~~(c) Section (C) of Article 2 of the Southwestern Low-Level~~
13 ~~Radioactive Waste Disposal Compact defines the term “disposal”~~
14 ~~to mean the permanent isolation of low-level radioactive waste~~
15 ~~pursuant to requirements established by the Nuclear Regulatory~~
16 ~~Commission and the Environmental Protection Agency under~~
17 ~~applicable laws, or by a party state if that state hosts a disposal~~
18 ~~facility.~~

19 ~~(d) Article 5 of the compact requires that a disposal facility~~
20 ~~shall be approved by the host state in accordance with its laws.~~

21 ~~(e) In 1988, Ward Valley in San Bernardino County was~~
22 ~~selected as the proposed disposal site. Ward Valley is near the~~
23 ~~Colorado River, which is an important source of water for Arizona,~~
24 ~~Mexico, and California, providing a water supply to areas such as~~
25 ~~Blythe, the Imperial Valley, the Coachella Valley, and urban~~
26 ~~southern California. The design of the facility proposed the~~
27 ~~shallow land burial of containers of low-level radioactive waste.~~

28 ~~(f) Ward Valley land is owned by the federal government and~~
29 ~~would have to be transferred to the state in order for the Ward~~
30 ~~Valley disposal facility to be constructed by the state’s licensee.~~
31 ~~The state made significant efforts over a decade to obtain the land~~
32 ~~from the federal government. In 1999, the United States Bureau of~~
33 ~~Land Management formally denied the state’s request to purchase~~
34 ~~the Ward Valley land for use as a low-level radioactive waste~~
35 ~~disposal site, citing, among other matters, questions about the~~
36 ~~suitability of the site and the extensive studies and tests that would~~
37 ~~be needed. The state and the state’s licensee sued the federal~~
38 ~~government to require the federal government to transfer the land,~~
39 ~~but the court found in favor of the federal government.~~

1 ~~(g) In the years since Ward Valley was selected as the disposal~~
2 ~~site, additional information has become available.~~

3 ~~(h) There have been seven sites in the United States where~~
4 ~~commercial low-level radioactive wastes have been disposed.~~
5 ~~Radioactive materials have migrated in at least six of these sites,~~
6 ~~including one that has been designated as a site subject to the~~
7 ~~Comprehensive Environmental Response Compensation and~~
8 ~~Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.),~~
9 ~~which is also known as the “Federal Superfund Act.”~~

10 ~~(i) There has been disagreement whether there is a hydrological~~
11 ~~connection between Ward Valley and the Colorado River. There~~
12 ~~also has been disagreement whether there is a potential for~~
13 ~~radioactive wastes disposed of at Ward Valley to contaminate the~~
14 ~~Colorado River. In 1984, the US Geological Survey found that the~~
15 ~~Ward Valley aquifer is a basin from which groundwater drains in~~
16 ~~the southerly direction toward the Colorado River.~~

17 ~~(j) In 1993, the California Senate Office of Research released,~~
18 ~~“How Safe? Issues Raised by the Proposed Ward Valley~~
19 ~~Low-Level Radioactive Waste Facility.” The report raised the~~
20 ~~following issues: (1) the potential for waste migration and~~
21 ~~groundwater contamination, (2) the adequacy of shallow land~~
22 ~~burial as a disposal method, (3) the lack of consideration of~~
23 ~~measures to minimize waste disposal, (4) the understatement of~~
24 ~~the risks of the waste stream, (5) lack of a redundant system for~~
25 ~~waste containment, (6) the site operator’s track record, (7) the~~
26 ~~potential for importation of out-of-compact wastes, and (8)~~
27 ~~problems with the low-level radioactive waste classification~~
28 ~~scheme.~~

29 ~~(k) The Ward Valley site, subsequent to its selection as a~~
30 ~~prospective location for a radioactive waste disposal facility, was~~
31 ~~designated as critical habitat for the desert tortoise, a threatened~~
32 ~~species under the endangered species act.~~

33 ~~(l) The Ward Valley land is considered sacred by several Native~~
34 ~~American tribes.~~

35 ~~(m) In 2000, at the request of Governor Gray Davis, Richard~~
36 ~~Atkinson, President of the University of California, chaired a~~
37 ~~committee that prepared a report entitled, “Management and~~
38 ~~Disposal of California’s Low-Level Radioactive Waste.” The~~
39 ~~report described the four main options: (1) continue the status quo,~~
40 ~~(2) divide, manage, and dispose of the waste stream by half life,~~

1 allowing different criteria to be applied to the design and disposal
2 for each type of waste, (3) build an “Assured Isolation Facility”
3 with the commitment to monitor and maintain the facility until the
4 wastes can be acceptably abandoned or managed in a different
5 manner, and (4) design, site, license, and construct a new disposal
6 facility or relicense an existing disposal facility as a low-level
7 radioactive waste facility. The report did not make
8 recommendations on which option should be adopted.

9 (n) In 2002, review of the state’s licensee’s application for
10 renewal of the Ward Valley license was suspended by the State
11 Department of Health Services pending the outcome of litigation
12 related to the license. The department reserved its authority to
13 review the request for renewal, including the requirement that the
14 application for renewal be filed in a timely manner.

15 SEC. 6. Section 2 of Chapter 513 of the Statutes of 2002 is
16 repealed.

17 Sec. 2. The Legislature further finds and declares all of the
18 following:

19 (a) Given the many problems, concerns, and issues attached to
20 the Ward Valley site and the lack of progress toward construction,
21 it is an appropriate time for the state to reevaluate how it intends
22 to provide for disposal of low-level radioactive waste and to carry
23 out its fiduciary responsibilities to protect public health, the
24 economy, and the environment.

25 (b) Because of the need to protect public health and the
26 environment, it is appropriate for the state to (1) prohibit shallow
27 land burial of low-level radioactive waste because of the potential
28 for the migration of radioactive waste beyond the site and to
29 groundwater, and (2) require that a facility be designed and
30 constructed to permanently isolate the radioactive waste to protect
31 public health and the environment.

32 (c) Because of the immense importance of the Colorado River
33 to California, Arizona, and Mexico, it would be inappropriate for
34 the State of California to further consider the proposed Ward
35 Valley low-level radioactive waste disposal site. Thus a low-level
36 radioactive waste disposal facility should be sited elsewhere.

37 (d) A low-level radioactive waste disposal facility should also
38 be sited to comply with state and federal environmental laws and
39 to recognize the importance of sacred Indian lands.

1 ~~(c) The Nuclear Regulatory Commission has established~~
2 ~~standards for the management and disposal of low-level~~
3 ~~radioactive waste. The state enforces those standards through an~~
4 ~~agreement with the commission. These standards contain~~
5 ~~requirements, including the performance objectives for radiation~~
6 ~~exposure, for the design, operation, and closure of a near-surface~~
7 ~~disposal facility.~~

8 ~~(f) The state may establish alternative standards for the design~~
9 ~~of a disposal facility, if those standards would, at a minimum,~~
10 ~~comply with the performance objectives for radiation exposure~~
11 ~~established by the Nuclear Regulatory Commission.~~

12 ~~(g) It is the intent of the Legislature to establish standards for~~
13 ~~the disposal of low-level radioactive waste to permanently isolate~~
14 ~~low-level radioactive waste, with the goal of protecting public~~
15 ~~health and the environment.~~

16 SEC. 7. The State Director of Health Services, with the
17 approval of the Director of General Services, may lease real
18 property to construct, operate, and close a low-level radioactive
19 waste facility, for any period of time consistent with Section
20 115255 of the Health and Safety Code, and upon the terms and
21 conditions that the State Director of Health Services deems are in
22 the best interests of the state, in all or any part of approximately
23 1,000 acres being in the County of San Bernardino in Sections 26,
24 27, 34, and 35, Township 9 North, Range 19 East, San Bernardino
25 Baseline and Meridian.

